IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc 34922-M of 2007

Date of decision: 8.10.2007

Gurmail Singh …Petitioner

Versus

State of Punjab …Respondent

Present: Mr CL Verma, Advocate, for the petitioner.
Mr IPS Sidhu, Sr DAG Punjab.

S.S. SARON, J (oral)

Heard counsel for the parties.

The petitioner seeks regular bail pending trial for the offence under Section 15 of the NDPS Act.

The FIR in the case has been recorded on the basis of Ruqa (memo) sent by Inspector Lakhwinder Singh. The said Inspector on 1.10.2006 along with other Police officials was present at special mobile barricade in the area of village Khera on the bifurcated way from Phagwara to Thakarki road for checking of vehicles. One Jaswinder Singh son of Diwan Singh per chance came present and he was joined with the Police party for checking of incoming and outgoing suspicious persons and vehicles. During checking, from the side of village Khera, a white coloured Qualis came there which was being driven by one clean shaven young man and another clean shaven young man (petitioner) was sitting on the side of the cleaner. The Inspector stopped the vehicle and the young man driving

the vehicle gave his name as Jaimal Singh (non-petitioner) and the other person disclosed his name as Gurmail Singh (petitioner). On checking the vehicle, three gunny bags, the openings of which were tied by jute twine were found lying in the boot. After complying with the necessary formalities, the gunny bags were searched and were found to contain poppy husk. In terms of the recovery memo, 30 kgs of poppy husk each in two bags and 35 kgs of poppy husk in one bag, totaling 95 kgs, was recovered.

Learned counsel for the petitioner has submitted that there is no signature of the petitioner on the recovery of the contraband. Besides, it is submitted that the petitioner was only sitting on the side as a cleaner and is neither the owner of the vehicle nor its driver. Therefore, it cannot be said that the petitioner was in conscious possession of the contraband. Besides, it is submitted that the petitioner is in custody since 1.10.2006 and only two PWs have been examined so far. It is submitted that the petitioner is not involved in any other case.

In response, learned counsel for the State has opposed the application for the grant of bail. It is submitted that the recovery was effected from the vehicle in which the petitioner was sitting and, therefore, the petitioner cannot take the plea of not being in conscious possession of the contraband. Besides, it is submitted that the recovery is that of commercial quantity. Therefore, the petitioner is not entitled to the concession of bail.

After giving my thoughtful consideration to the matter, it may be noticed that the petitioner is in custody since 1.10.2006 and only two PWs have been examined so far. The question whether the petitioner was in conscious possession of the contraband or not, is to be considered and gone into after the prosecution has concluded its evidence in the trial. The

trial in the case is likely to take some time as seven more PWs still remain to be examined, even though some of them may be formal witnesses and some may even be given up. The petitioner is not shown to be involved in any other case.

Keeping in view the fact that it is debatable whether the petitioner was in conscious possession of the contraband or not as also the fact that he is not involved in any othercase, it can be inferred at this stage that the petitioner is not guilty of the offence that has been attributed to him and that while on bail he is not likely to mis-use the concession of bail.

Consequently, the petitioner, on his furnishing personal bond and surety of the like amount to the satisfaction of CJM Kapurthala, shall be admitted to bail.

However, nothing stated herein above shall be construed as an expression of opinion on the merits of the case and the trial Court shall consider the material and evidence as adduced before it in accordance with law.

8.10.2007. (S.S.SARON)
ASR JUDGE